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LOS ANGELES BAR BULLETIN



In This Issue

Lawyers Returning From Military Service—Editorial	<i>E. W. T.</i> 353
Practice of Professions in Mexico	<i>William B. Stern</i> 354
Professional Ethics—Opinions of Committee	355, 356, 358
Daniel Webster Writes an Opinion	<i>E. D. M.</i> 359
Wage and Salary Stabilization	<i>Perry Bertram</i> 360
Registration of Land Titles	<i>C. H. Harbes</i> 374
Index to Volume 20	382

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LAWYERS RETURNING FROM MILITARY SERVICE

EVERY DAY we meet or read about some lawyer who has been released from military service and who is returning to active practice. It is not easy for a person who has continued in practice during these war years to place himself in the position of a lawyer who has left his practice for military service and now seeks to re-establish himself. Each of us who has remained in practice need spend but three minutes in reflection to realize what would happen to his practice if he were to leave it for a matter of weeks, to say nothing of months or years. The State Bar and the Association have committees that are undertaking to assist returning lawyers to re-establish themselves. The least those of us who have remained can do is to join whole heartedly in the programs of those committees. In a

measure, we have been able to continue our affairs without interruption (and these war years have been good to us) because of the absence of some. We hope that no one ever will be able truthfully to say of us that we are ungrateful.—E. W. T.

THE PRACTICE OF PROFESSIONS IN MEXICO

By William B. Stern*

A RECENT Mexican law greatly restricts the practice of professions in Mexico by foreigners. The law, dated December 30, 1944, was not published until May 26, 1945 (Diario Oficial, vol. 150 no. 21). Although it came into effect on the latter date, its practical results will depend on future executive regulations. However, unless greatly modified, the statute will materially affect Americans domiciled or planning exploratory or development work in Mexico.

Under Article 15 of the law, foreigners, as a rule, may not practice technical and scientific professions in the Federal District or Territories (such as Lower California). Among the professions which fall under the list of activities reserved to Mexicans, are those of architect, accountant, engineer, attorney, metallurgist, chemist, physician, and many others.

Exceptions from this prohibitory rule are few. Political refugees who find asylum in Mexico may be granted temporary permit to practice, and foreigners who have practiced their professions in Mexico for the last five years may continue to do so under certain conditions. Otherwise, foreigners, and even naturalized citizens, may, unless they acquire Mexican degrees, practice in Mexico merely temporarily and only in the capacity of teachers of particular subjects or as consultants at educational institutions or as technical managers of enterprises engaged in the exploitation of the natural resources of Mexico.

The law does not apply to employees actually practicing their profession at the present time; but in cases of termination of services, they must be replaced by persons qualified under the law.

*Foreign Law Librarian, Los Angeles County Law Library.

OPINION NO. 155

(June 7, 1945)

ADVERTISING AND SOLICITATION—LAY INTERMEDIARIES. An attorney may, with propriety, accept employment from a trade association and give advice to the members thereof concerning matters of interest to the association as a whole; nor is there any impropriety in the president of the association addressing a letter to such members advising them to consult with the attorney with reference to such matters.

An attorney presents the question as to whether it would be proper to include a paragraph in the following form in a letter to be sent by the president of a certain Guild or trade association to its members:

"By unanimous action the members also voted to retain....., associated with the law firm of....., as General Counsel and Executive Secretary of the Guild. You are earnestly requested to consult with him, by telephone, or in person, prior to filling out new governmental reports or otherwise supplying information to administrative agencies in any matter which directly or indirectly affects all the members of the Guild. Questions as to the Guild's interpretation of administrative directives and orders should also be directed to him. His telephone number is"

The paragraph proposed to be inserted implies that the attorney is employed by, and receives all of his compensation from, the Guild as an association, for his services as indicated therein, and that his employment will not include the rendering of legal services to the members of the organization in respect to their individual affairs.

Assuming this to be the case, this committee sees no impropriety nor breach of any rule of the Los Angeles Bar Association nor of the State Bar of California in the president's inserting the proposed paragraph in his letter to the Guild members.

This situation seems to be provided for in Canon 35 of the Canons of Professional Ethics of the American Bar Association, the material portion of which reads as follows:

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employ-

ment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."

This opinion, like all opinions of this committee, is advisory only. (By-Laws, Art. VIII, Sec. 3.)

OPINION NO. 156

(June 7, 1945)

PRACTICE OF LAW—PERSONS NOT ADMITTED. An Attorney admitted to practice in a sister state, in the Supreme Court of the United States and in various Circuit Courts of Appeal, but not admitted to practice in California, may, with propriety, (a) handle legal matters before the Circuit Court of Appeals for the Ninth Circuit upon taking the oath and subscribing the roll of attorneys of that court; (b) handle matters before administrative boards or tribunals which do not require admission to practice as a prerequisite to appearance before them; (c) assist members of the California Bar in cases before the State Courts without appearing as attorney of record. Such attorney may not, however, advertise either generally or to attorneys only with the aim of seeking employment either in specialized fields or otherwise.

An attorney who is admitted to practice in the Supreme Court of the United States, various Circuit Courts of Appeal and in the State of New York, but who has not as yet been admitted to practice in the State of California, has requested an opinion as to whether he may, with ethical propriety:

(1) Appear in behalf of others before the United States Circuit Court of Appeals;

(2) Appear in behalf of others before the National Labor Relations Board and before other and similar federal agencies;

(3) Assist members of the California bar in cases to be brought or pending in California state courts, without appearing as an attorney of record;

(4) Publish an advertisement in a "trade" paper of the legal profession, offering to attorneys only his services in the fields of federal appellate work, labor relations, etc.

In the opinion of this committee, the propriety of the activities mentioned above in items (1) and (2) is established by law, and neither of said activities would be unethical.

Thus, with respect to (1), Rule 8 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit provides, among other things, that "All attorneys admitted to

practice in the Supreme Court of the United States . . . shall be deemed attorneys of the Circuit Court of Appeals for the Ninth Circuit; but such attorneys on or before their first appearance in open court, in said court, shall take an oath or affirmation, in the form prescribed by Rule 2 of the Supreme Court of the United States and subscribe the roll of attorneys."

With respect to (2), inasmuch as the law provides that one may practice and represent others before the agency without being an attorney at law, admitted to the bar of a state, no question of professional ethics is raised by such practice, in and of itself.

With respect to (3), the California State Bar Act (California Business and Professions Code §6125) provides that "No person shall *practice law* in this State unless he is an active member of the State Bar." The question, therefore, is whether or not the activities mentioned above in (3) constitute the "practice of law." In our opinion, it is neither unlawful nor unethical for an attorney to render services to members of the California State Bar when he does not appear of record in the State courts, or address such courts on behalf of others, or personally give legal advice to clients, or, on his own responsibility to a client, prepare legal instruments or contracts, or do any other act which the courts have defined to constitute the "practice of law." The members of the State Bar of California for whom the attorney would render services would, of course, be responsible for their and his acts in all matters wherein he would render them assistance.

We deem it appropriate, however, that we call to the attention of both the attorney in question and any other attorneys for whom he may render services the provisions of Rule 3 of the Rules of Professional Conduct of the State Bar of California to the effect that a member of the State Bar shall not "directly or indirectly" share with a person not licensed to practice law his own "compensation arising out of or incidental to professional employment." (See also, Canon 34, Professional Ethics, American Bar Association; also Opinion No. 143 of this Committee.)

With respect to the activities mentioned above in item (4), the committee is of the opinion that the publishing of an ad-

vertisement such as the attorney proposes would be unethical in that it would constitute an advertisement for professional employment in violation of Canon 27, Professional Ethics, American Bar Association, as amended, and of Rule 2 of the Rules of Professional Conduct of the State Bar of California, as amended, and in effect December 1, 1944, by approval of the Supreme Court.

This opinion, like all opinions of this committee, is advisory only. (By-Laws, Art. VIII, Sec. 3.)

OPINION NO. 157

(July 2, 1945)

ADVERTISING AND SOLICITATION—Announcement of Return to Practice. An attorney may, with propriety, circulate among attorneys only an announcement of his return to private practice calling to their attention that he is in a position to render them specialized legal services.

An attorney has inquired as to the propriety of circulating only among attorneys the following proposed announcement:

"JOHN DOE

ATTORNEY AT LAW

1234 Blank Bldg., Phone No.

Los Angeles

ANNOUNCEMENT is made of my return to the private practice of the Law where I will engage in a general practice giving especial attention to the law governing insurance and related subjects.

Fifteen years with major casualty insurance companies locally as counsel, trial attorney, claims supervisor, etc. equips me to render unusually valuable service to members of the Bar desiring association in this highly specialized branch of law."

The Committee sees no objection to circulating the above proposed announcement among attorneys only if, and only if, the concluding paragraph is omitted. The self laudatory statements therein made, would in the opinion of the Committee, constitute a violation of Rule 2 of the Rules of Professional Conduct of the State Bar of California, and Canon 27 of the Canons of Professional Ethics adopted by the American Bar Association, both of which are directed against advertising and solicitation. See also Opinions Nos. 1, 36 and 145 of the Committee on Professional Ethics and Grievances of the American

Bar Association; and Opinions Nos. 127, 128 and 147 of this Committee. While it is true that Canon 46 of the Canons of Professional Ethics permits a lawyer engaged in rendering a specialized legal service directly and only to other lawyers to call attention to that fact in a brief dignified notice, the second paragraph of the proposed announcement, in our opinion, goes far beyond the limit permissible under the Canon. In this connection, see Opinion No. 145 of the American Bar Association Committee on Professional Ethics and Grievances and Opinion No. 110 of this Committee, each dealing specifically with the problem and holding that the mailing of the particular notice there under consideration—differing in each case radically from the proposed notice quoted above—was proper.

This opinion, like all opinions of this Committee, is advisory only. (By-Laws, Art. VIII, Sec. 3.)

DANIEL WEBSTER WRITES AN OPINION

THE writer has come into possession of an opinion by Daniel Webster, on the legality of a marriage performed in Maine, under the circumstances related. It is in his own handwriting and is signed by the great Senator-lawyer. Its authenticity is attested by Mrs. J. L. Logan, of Los Angeles, who says it was obtained from the widow of Harold Small, while she resided in Maine, and who in turn obtained it from his father, Hon. Reul Small, for many years a reporter of debate in the U. S. Congress. It was presumably written prior to 1850. It is a unique document, not only because of the reputation of the author, but also because of the inconclusiveness of the opinion. It reads as follows:

"Rev. A, of Mass., on a visit to Maine solemnized the marriage of Mr. B and Miss C of that State, this having been published according to law and desired the said A to marry them. Said marriage rites solemnized in church and with the mutual consent and satisfaction of all parties concerned. Also all parties concerned acted innocently and in good faith.

"QUESTION:

"Was said marriage valid in respect to the said B and C? This depends on the laws of Maine. The transaction would probably amount to a marriage at

common law but is not in conformity to the statute provisions of Maine. Whether there be anything in the laws of the state declaring marriages void which are not solemnized according to these statute provisions I am not informed

DANIEL WEBSTER."

—E. D. M.

WAGE AND SALARY STABILIZATION

By Perry Bertram, of the Los Angeles Bar*

"Jack, how much are you making? What! 70c! I'll give you 75c."

"Jack, what are they paying you? What! Only 75c! I pay 80."

"Jack, come over and work for me. You'll get 85c and a bonus."

Throughout the country those words—theme with infinite variations—were being uttered in a frenzied bid for labor. And workers heeding the call, scurried from plant to plant, seeking, and, receiving, ever higher wages.

One could actually see the "inflationary spiral," and realization came that this was not just the name of an economic principle. Indeed, if a pencil were attached to Jack's coattail and geared to his paycheck, it would, as he went from plant to plant, getting higher and higher wages, trace a very definite ascending spiral.

So, in the fall of 1942, Congress, at the President's insistence, authorized and instructed him to stabilize prices, wages and salaries, using as a basis, their levels on September 15, 1942.¹

Promptly, on October 3, 1942, President Roosevelt issued Executive Order No. 9250, which created the Office of Economic Stabilization to carry into effect the general instructions given by Congress.

The National War Labor Board was already in existence since January 12, 1942, when it was created and charged with the responsibility of adjusting and settling labor disputes certi-

*Mr. Bertram formerly was Attorney for the United States Department of Labor, with the Wage-Hour and Public Contracts Divisions.

¹Emergency Price Control Act, as amended October 2, 1942, Public Law No. 729, 77th Congress, 56 Stat. 765.

fied to it by the Secretary of Labor as impossible of settlement by other specified procedures.² Executive Order 9250 gave to the Board, as we shall call it hereafter, the duty, and the necessary additional authority, to carry out the wage policies stated in the Order and in the directives to be issued thereunder by the Office of Economic Stabilization.

On October 27, 1942, James Byrnes, Director of the Office of Economic Stabilization, issued regulations which made the Commissioner of Internal Revenue responsible for the stabilization of certain salaries, generally in the higher brackets. For convenience, we will hereafter refer to the Commissioner by the initials SSU, for the Salary Stabilization Unit created by him for the purpose indicated by its name. The SSU exercises jurisdiction over salaries at a rate in excess of \$5000 per year, and over salaries, regardless of amount, which are paid to "executive," "administrative" and "professional" employees who are not represented by a recognized or certified labor organization. (The definitions of the terms "executive," "administrative," and "professional," which are used by the Administrator of the Fair Labor Standards Act of 1938 were adopted for the purpose of determining who such employees are.) With certain exceptions,³ the Board continued to exercise jurisdiction over all wage payments and all salaries not under the jurisdiction of the SSU.

Obviously, to control effectively the steeply rising rates of compensation, it was necessary to include not only the usual forms of compensation, such as wages, salaries, bonuses, commissions, fees, and the like, but also any other form which might be in use or which might be devised by ingenious employers or employees to sidestep the contemplated control. Accordingly, the definitions of wages and salaries wound up with the catch-

²Executive Order 9017.

³For example, control over compensation paid to "agricultural labor" was placed in the hands of the Secretary of Agriculture (and on March 26, 1943, transferred to the War Food Administrator). By separate order, Executive Order 9299, the President, on February 4, 1943, conferred upon the Chairman of the National Railway Panel, power to veto proposed adjustments in the compensation paid to employees subject to the Railway Labor Act. Other groups of employees whose compensation would otherwise be under the control of the Board, have from time to time been placed by the Board in the hands of special boards or commissions. Examples are trucking employees, West Coast Lumber employees, and West Coast Aircraft employees. However, in most cases the Board exercises supervisory authority over commission cases.

all, "any other remuneration, in any form or medium whatsoever."⁴ Thus, control may be exercised over almost every benefit, direct or indirect, tangible or intangible, which an employer may wish to confer upon an employee by reason of the employment relationship.

From a practical standpoint it obviously was impossible for the Board, the SSU, and the various other agencies, boards or commissions, to pass upon every proposed adjustment in wages or salaries of every employee in the country. Two basic approaches were taken to eliminate from the necessity of specific approval a number of adjustments which might be proposed. On the theory that adjustments made by employers of only a few employees would not seriously affect the stabilization program, it was announced that, with certain limitations, employers of eight or fewer persons might make adjustments without securing prior approval.⁵ Secondly, realizing that certain types of adjustments are made in normal times entirely unmotivated by efforts to secure employees from competing employers or to keep employees from going to competitors, and that such adjustments do not normally or substantially increase an employer's labor cost, adjustments are allowed without the need of securing prior specific approval where they are made because of increased merit, for length of service and because of promotions or reclassifications.⁶

These two exceptions were at once, and to some extent still are, sources of serious danger to the unwary employer, for neither the Board nor the SSU intended them to be as broad as they could be, and were, read.

By several successive amendments to General Order No. 4, the Board has now made it clear that the exception for the small employer is lost as soon as he has made adjustments in any one year affecting eight individual persons employed by him.

⁴Regulations of the Economic Stabilization Director, Sections 4001.1 (e) and (g). Insurance and pension benefits in a reasonable amount are, however, excluded.

⁵General Order No. 4 of the Board, and Regulations, Section 1002.31 of the SSU.

⁶General Order No. 5 and General Order No. 9 of the Board, and Regulations, Section 1002.14 of the SSU.

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The year runs from October 3rd in the case of wages, and from October 27 in the case of salaries. Thus, an employer who on November 1, gives each of his eight employees a raise must secure approval from the Board for any further adjustment in compensation within the Board's jurisdiction which he wishes to make until the following October—even though he at no time has more than eight employees.

Furthermore, the Board discovered that there are a number of industries, made up largely of small employers, which occupy an important position in the labor market, either nationally or in localized areas. To meet the irresistible pressure which was being exerted by these employers on the stabilization plan, numerous groups of employers have been denied the exemption. As this is written there are 59 exceptions from the small employer exemption.

An employer of eight or fewer employees, therefore, must check the increases made by him during the year and make sure he is not on the list of exceptions, before he is safe in making a proposed adjustment.

The danger inherent in the loose wording of the second exception has to a large extent been minimized since the middle of 1943 when the Board, by General Order No. 31, made it clear⁷ that to take advantage of the type of adjustments permitted an employer must have had *both* a set of well defined rate ranges for his job classifications *and* a definite plan for making adjustments within and between those ranges. The Board for this region, at least, found it necessary to give these requirements a strict interpretation, and very few were the fortunate employers who were deemed to have had both rate ranges and a plan established prior to stabilization.

General Order 31 also provided that employers of 30 or fewer employees might make adjustments to their employees, subject to certain limitations even though rate ranges and a plan

⁷The word is used with some trepidation, having well in mind the words of a high placed official of the Board, who said that when the writers of the order brought it to him for his consideration he read the first page and remarked that he thought employers might have a little difficulty understanding it. Upon finishing the second page he told the authors that in his opinion only God and they knew what was meant. With the last page he was convinced that God had dropped out.

had not been established. Among the limitations are (1) the total of such increases to any individual employee must not exceed 10c per straight time hour during any year beginning July 1,⁸ (2) the total amount of all increases shall not exceed an average of 5c per straight time hour for all employees in the establishment during any year, (3) no employee may be increased to a rate above the highest rate paid by the employer between July 1, 1942, and June 30, 1943, for jobs of similar skill, duties and responsibility, (4) such increases may not be contrary to the terms of a collective bargaining agreement, and (5) such increases shall not (a) be the basis of application to the Board for approval of increases to eliminate intraplant inequities, (b) result in any appreciable increase in the level of production costs, nor (c) be the basis of an application for price relief.

⁸The period specified by the language of the Order. The Board has, however, announced that the calendar or fiscal year may be used. Interpretative Bulletin No. 4, Question and Answer No. 34. (C. C. H., ¶11,806.203.)

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Employers of more than 31 employees are under the general rule that merit, length of service, and similar increases, may be made only in accordance with a schedule embodying both rate ranges and a plan for making orderly adjustments within and between those ranges.

The General Order of the Board allow adjustments without specific approval in a number of other instances which, because they affect only limited groups of employers and employees, are not discussed here.

Since the exception for the small employer is narrower than many small employers have assumed, and since in most cases the merit, length of service, reclassification, promotion, and similar increases allowed by the second exception is available only to those employers with both rate ranges and a plan, of which says the Board, there were very few, it is necessary to examine the methods of securing approval of individual or general adjustments.

Preliminarily, because of the severity of the possible penalty if one guessed wrong and realizing the difficult problems of interpretation created by the language of the General Orders, the Board has provided a quick method for securing an official ruling as to whether or not a proposed adjustment is within one or more of the General Orders permitting the adjustment without specific approval. A statement of the facts upon which a ruling is requested is placed on or attached to NWLB Form 1. The completed form is filed at the nearest office of the Wage-Hour and Public Contracts Divisions, U. S. Department of

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Labor,⁹ which is authorized by the Board to issue such rulings on its behalf. Form 1 is simple to fill out, rulings are returned within two or three days in most cases, and therefore many employers use this method whenever they feel, but are not certain, that the adjustment is permissible under one or more of the General Orders.

The SSU gives similar rulings upon request.¹⁰ No special forms are provided or required.

If the adjustment is not permissible without specific prior approval, Board approval may be sought by use of Form 10, SSU approval by use of either its Form 1 for existing jobs or its Form 2 for newly-created positions.

The preparation of these forms requires time and research into the company's records, and often approval cannot be expected prior to one or two months after the application is filed. Some cases have been known to take many months before final action. It is desirable, therefore, to organize the wage and salary structure so that adjustments may be made without specific approval in each instance under the second exception previously discussed.

For the vast majority of employers of more than 30 employees, who did not, according to the Board, have a schedule of rate ranges and a plan, approval of such a schedule may be sought under General Order 31 for employees whose compensation is under the jurisdiction of the Board. After approval of such a schedule, adjustments may then be made within and between the approved rate ranges according to the approved plan, without the further necessity of resorting to the Form 1 or Form 10 procedure.

In establishing the rate ranges, particular attention must be given to accurately describing the job content, that is, the duties, responsibilities and qualifications of the employees in a given job classification. Once the classifications are established, the desired ranges for those classifications must be determined. The Board will not authorize ranges which have too wide a spread between the bottom and top rates for a given classifica-

⁹In Los Angeles, located at 417 H. W. Hellman Building, 354 South Spring St., Los Angeles 13. General information and Board Forms are available at this office.

¹⁰In Los Angeles, located at 902 Subway Terminal Bldg., 417 So. Hill St., Los Angeles 13.

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tion. For example, one should not expect approval for a range of from 50c to \$1.00 for a particular job. As a general rule, approval might be expected for a rate range spread of 10c to 15c in the lower brackets, 15c and possibly 20c in the medium brackets, and over 20c in the higher brackets.

There are some guides as to the rates which are approvable for a particular job classification. The Board has published rates which it will approve for certain jobs in this area. These may be obtained from the Wage-Hour and Public Contracts Divisions. For jobs as to which approvable rates have not been announced, the sought for rates should be justified by the legally prevailing rates in the area for the job.

Once the jobs have been described and the desired rate ranges determined, the employer must decide upon a definite plan for the making of adjustments. A plan is suggested in General Order 31 itself, and while an employer is, according to the Order, free to ask for approval of some other plan, he will normally be held to the key limitations of the plan described in the Order.

As has been said, once approval of the schedule is obtained, adjustments affecting employees subject to the Board may be made according to the schedule without further applications.

Comparatively few employers will find themselves in a position to do the same thing with their executive, administrative and professional employees. The policy of the SSU is to approve rate ranges only where there are several, generally at least ten, employees in a given job classification. Except for those employing vast numbers of employees, the average employer has only one or two or possibly three employees in any single position in the management group. In that case he will have to secure specific approval from the SSU for each proposed adjustment. However, the SSU will give consideration to proposed groupings of job classifications having generally the same responsibilities and comparable job requirements for the purpose of approving one range for the group.

Individual or group adjustments may be sought from the Board entirely apart from the establishment of a schedule under General Order 31. Such adjustments may be approved if necessary:

(1) To raise rates to the point deemed necessary to provide living conditions which are not "substandard." What this point is depends upon who does the "deeming." The Board now deems a rate under 55c an hour substandard and has given blanket approval to raise rates to that figure without prior application and ruling. There is a considerable body of official opinion which considers that unless at least 60c is paid, the worker cannot earn enough to provide a proper living, and organized labor has accumulated an impressive series of statistics which demonstrate that the rate must be considerably higher under present conditions.

(2) To provide the "cost of living" increase approvable by application of the Little Steel Formula. Briefly, this formula permits a general increase up to 15% above the level of the average hourly earnings of employees in a particular establishment as such level existed on January 1, 1941. It may be assumed,¹¹ that by the present time, most employers already

¹¹The writer has, however, made no research in an effort to support the assumption.



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have increased the general level of the wages paid by them at least the amount allowable under the Little Steel Formula. Accordingly, these employers must base their proposed adjustments on one or more of the other rules.

(3) To eliminate intra-plant inequities. This action is taken to correct conditions which may arise when, for example, long hours of work result in employees subject to the overtime requirements of union contracts or the Fair Labor Standards Act receiving "take-home" pay increased out of proportion to the "take-home" pay of employees not receiving pay for overtime. In the early days of wage stabilization, some employers found that the "freeze" date interrupted their adoption of a plan of plant-wide increases with some employees having received the increase and some not. Limitations of space prevent the citing of other examples. If, however, the inequity existed prior to wage stabilization and was not corrected or in process of correction at the time of the "freeze" the Board is inclined to withhold its approval from corrective proposals. Furthermore, in seeking approval of any type of adjustment, the employer must assure the Board that adoption of the proposed adjustment will not create a new inequity which the employer will want to eliminate by further increases.

(4) To raise rates to the minimum of the range of "sound and tested rates" prevailing for a particular occupation within the labor market. This principle involves the use of the so-called "bracket" system. The Board determines from information available to it¹² what rates are being paid by employers within the area to employees in a given classification. Exceptionally low or high rates are disregarded as not being entitled to any weight in determining what is "sound and tested." The minimum of the bracket will ordinarily be set at the point at which the first significant cluster of rates appears and the maximum at the point of the highest significant cluster.

(5) To aid in the effective prosecution of the war. This is an exception to the general rule that approval for adjustments may not be sought for the primary purpose of affecting the flow of manpower. Therefore, only in "rare and unusual" cases,

¹²Statistics compiled by the Bureau of Labor Statistics, studies submitted by the parties, information contained in previous applications, etc.

where proper certifications are submitted from the Army, Navy, War Production Board, or similar agency, that wage relief is essential to aid in the effective prosecution of the War, will this type of adjustment be approved.

(6) To allow the so-called "fringe" adjustments. As the name indicates, these adjustments are not of basic rates but of those benefits accorded to employees and included under stabilization control by the omnibus portion of the definitions, "any other remuneration in any form or medium whatsoever." Within this policy approval will normally be given for reasonable vacation plans, incentive and other types of bonus plans, night shift differentials, sick leave plans, and so forth.

On behalf of the Board, the ruling on an application for approval of an adjustment is made by the Director of the Wage Stabilization Division of the Regional Board. Applicants dissatisfied with the ruling may request reconsideration by the Regional Board as a body. If the action of the Regional Board upon reconsideration is unsatisfactory, request for review by the National Board may be made. Such review may or may not be granted at the Board's discretion.

For the SSU, rulings are made by the Head of each office. Reconsideration of his initial decision will be granted by the Head, and his action upon reconsideration may be reviewed by the Deputy Commissioner upon request of the applicant.

Much has been said and written about the severity of the penalties for payment of wages or salaries in violation of the rules and regulations of the Board or the SSU, and further elaboration is not necessary. As is known—tremblingly in many cases—the usual penalties of fine or imprisonment are augmented by disallowance of the total compensation affected by an unauthorized adjustment for income tax, contract cost allowance, or renegotiation purposes, to mention the more important.

In violation, or "contravention" cases, as the SSU prefers to call them, the agencies involved have followed the practice of first attempting to persuade the employer to agree what portion of his payroll deemed by the agency to have been affected by violations shall be disallowed. If agreement cannot be reached, formal hearings will be held by the agency involved. It is important to bear in mind that the Regulations of the

Economic Stabilization Director provide that "Any determination of the Board [or of the Commissioner, as the case may be] made pursuant to the authority conferred on it shall be final and shall not be subject to review by the Tax Court of the United States or by any court in any civil proceeding."¹³ [Emphasis added.]

It may, however, be safely assumed that a disallowance will not be certified in an amount which will put the employer out of business, and it has been announced that in determining the amount of disallowance consideration will be given to good faith, justifiable misunderstanding, and other mitigating circumstances. Employers may derive some comfort from this statement particularly if their violations, if any, occurred in the early days of stabilization. It will be more difficult, perhaps, successfully to plead good faith or justifiable misunderstanding for recent violations.

The future? One further assumption among the several already made may be indulged in. One might expect Congress to continue the stabilization program long enough following the close of the war to be reasonably certain that pressure on our economy in the opposite direction will not result in deflation as dangerous as the inflation which has been largely averted. The time required to reach that reasonable certainty is anybody's guess.

Something might — but will not here — be said in excuse or justification of the annoyances, the grievances, the hardships caused by the entire program and by the manner in which it has been carried out. Whether or not the errors and blunders can be excused or justified, this much might be said. The run-away rise of wages and salaries was brought under control and slowed down immeasurably—sufficiently, it is believed, to have played a major part in protecting us from the catastrophe of a disastrous inflation.

¹³Regulations Part 4001, Sections 4001.2 and 4001.4.



BUY BONDS



REGISTRATION OF LAND TITLES

By C. H. Harbes*

REGISTRATION of land titles is not a new system. In the 13th Century in Bohemia the first known system of land registration was used. It was later applied in middle Europe in 1836, and in 1897 all land in the German Empire was brought under a form of registration by a mandate and there was no other kind of title permitted. Land registration is also found in Austria, Hungary, and Switzerland. In France they have a similar system, differing from other systems slightly, but nevertheless it is a form of registration. In the French colonies of Algiers and Northern Africa their system of land titles is entirely under registration. In England in 1862 a law was adopted making land registration optional. It never became very popular but it is in existence today. Prior to 1858, Sir Robert Torrens became very active and prominent in promoting land title registrations and that is what has given the name of "Torrens Title" to that type of registration. In Australia in 1858 it became compulsory to register all lands under that system and while the Torrens system differs from the ones found in Europe, it is quite similar. It was apparently founded on the system of ship registration as its beginning.

In the United States there are nineteen states having land registration laws, beginning in 1896 and through the years until 1917. Illinois was the first state to adopt a registration law which was held constitutional. There was one, I believe it was Ohio, which adopted a law in 1896 that was later held unconstitutional, and was not amended until 1912. After amendment at that time it was held constitutional and they now operate under that law. The state of Utah was the last state to adopt a registration law and that was in 1917. Out of the nineteen states there is only one in which the law has been repealed, leaving at the present time eighteen states having title registration laws.

In California the first registration law was adopted in 1897. The law was held constitutional, but it was very sketchy and

*Mr. Harbes is Superintendent of Land Registration in the office of the County Recorder of Los Angeles County. This article contains the substance of an address given before the Association's Section on Probate, Real Property, and Trusts.

was not sufficiently definite to be adopted for general use. It was an idle statute until 1914, when the present land title act was adopted as an initiative act.

In California land registration may be accomplished in four different types of action. First, as provided by the act itself. In about the first twelve sections of the act is set up very definitely the type of petition which must be filed and all other necessary proceedings. Second, the act also provides that in probate actions a petition may be filed for registration and the probate court has jurisdiction to hear and determine the registration. Third, registration may also be had under an action to quiet title, and, Fourth, in actions for partition. The more common method is the bringing of an action to quiet title and register at the same time. It follows more or less the usual quiet title action. The procedure is set up in the act for all of the different types of action.

In the matter of parties defendant, the act requires that adjoining owners must be named in the action and served and that they must either consent to or appear in the action before the

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court will order registration. That is probably because of possible conflicts of description, causing overlaps, which would be eliminated by the action.

The act provides that for a land registration petition no notice of action need be recorded, that the fact that the petition is filed is sufficient. In such an action the court determines the fact of title and the condition of title, determines whether there are encumbrances and what they are, whether there are easements, what they are, where they are if they are definitely located. The decree is in effect a decree quieting title.

In an action to register, if the petitioner should die the action may be continued by the administrators or executors of the estate, or the petition may be withdrawn at any time prior to the hearing, the only requirement being the payment of accrued costs and fees.

After the court has issued its decree ordering registration the certified copy of that decree is presented to the registrar of titles. It is registered and a certificate is then issued. The certificate shows the fee owner and any encumbrances shown by the decree of registration. The registrar, when the decree is presented for registration, takes the required fee, which in the case of a single parcel of land is \$1.00. For that dollar we use ten cents worth of paper and spend \$4.50 of time to write it up, but at the same time we are required to collect the fee that goes to the state and which is placed in the insurance fund, that fund being for the protection of the title which has been registered. The amount collected is 1/10th of 1% of the assessed value of the property being registered. You can readily see that that will not amount to any great sum.

The Land Registration Act of the State of California provides that adverse possession will not run as in ordinary record title, and it further provides that the certificate of title issued by the registrar is conclusive evidence of the title which shall be accepted in any court. It is within the province of the registrar, upon request of the owner or owners to combine or issue separate certificates for parcels in the existing certificate or for undivided interests. Each owner is entitled to a separate certificate if he so desires. We try to discourage those requests for separate certificates for undivided interests. We have in our office a registration covering some property near Santa Fe

Springs. As they sold those properties in undivided 4000ths interests you can see what a task it would be to issue certificates to everybody holding a 1/4000th interest.

When a certificate has been issued showing any memorial—and by memorial we mean a trust deed, mortgage, easement, an ordinance ordering improvement, notices of tax sales, or anything of that nature—which is a lien or charge on the land, the memorial must be carried until some document is filed which will release it. Title may change several times. If a trust deed is still alive and the title has been taken subject to the encumbrance, the memorial of the trust deed must be carried forward on each certificate until a reconveyance is registered; that reconveyance then appears as a memorial and upon the next change of title we drop both the trust deed and the reconveyance. The new certificate is supposed to reflect only the live encumbrances.

The conveyances and encumbrances offered for registration are, by the act, required to have an endorsement stating that the document affects registered land and it must show the last certificate number. It is not supposed to be the job of the registrar to look up and determine which certificate a document should be entered on. That, however, is theoretical. A great many documents come in from people who do not know their certificate number or did not when the document was drawn, or didn't know it was necessary. We do not reject them if the number of the certificate can be readily determined. The required information is supplied by our office and the document is registered:

Every conveyance of title requires a transferee's affidavit. That is one thing that seems to be mysterious to most people, including attorneys, notaries, and escrow agents. They insist that there is no real reason for it; that it is just another document to complicate a transaction. The reason for such an affidavit is that it is filed for identification purposes. The affidavit takes the place of a statement of identity, usually required for title insurance, and it also provides a means of checking signatures on future documents. Most people are not aware that when a document is presented to the Registrar that the signature is compared with the signatures on the affidavit executed when the man or woman or both acquired the title. We have, in the

last two weeks, caught one forgery and prior to that time, we have caught a number. I might add that one of those was such a clever forgery that it passed one of the title companies and they were willing to insure it.

A conveyance in trust is another thing that has a special application under registered land. The law provides that in any conveyance in trust if the trustee is to deal with the property afterward without an order of court, the granting clause must recite "with power of sale" and those words are quoted in the act. The court has held that the words "with power to sell" did not meet the requirements of the act and they could not convey. It even went so far as to say that a trustee under a trust deed that did not contain the words "with power of sale" had no power to reconvey without an order of court.

An order of the court affecting registered land is no different than any other order except that it must recite the fact that the land is registered. It must give the number of the certificate of registration and it must direct the registrar to cancel the certificate or enter a memorial, whichever is required. It seems that some confusion arises in the minds of some of the attorneys when they read section 1223 Probate Code, because it says the court's order shall direct the registrar of titles to issue a certificate of title or to note a memorial of the transaction, as the case may be, so the attorney quotes the section and the court signs it, and thus passes the buck to the registrar to do whichever may be required. We have been accused many times of making laws of our own and usurping the power of the court, but in these instances we must reject the order and have the court say which shall be done. Specimen forms of orders have been prepared which are available at the registrar's office.

I wish to mention the fact that the recordation of a notice of action as required by the code is also a requirement of registered land. The notice of action must appear on the certificate or a purchaser for value may become the purchaser without notice and will not be bound by any action pending. Once a notice of action appears as a memorial on the certificate it can only be removed by the filing of a certificate of dismissal, signed by the clerk of the court, and not a dismissal of the action by the attorney, as is customary in actions affecting land other than registered land.

An attachment must likewise be shown on the certificate of title before it becomes effective. A release of attachment must be filed in the office of the registrar, and if an action has gone to judgment a certified copy of that judgment must be registered before a judgment lien is created on the property.

I might call your attention to the fact that a money judgment registered in the office of the registrar will affect only property described in the particular certificate on which the judgment is registered. There is no provision for a blanket filing, so that if you do not know whether a man owns 1 or 2 or 5 parcels and you want to cover all, it is necessary to run the indexes to determine the property which he owns and the numbers of the certificates, and then request that your judgment be registered on all of those certificates.

A mechanic's lien is one of the few documents that must be both registered and recorded. That has been held in two decisions by the supreme court. In one, it was held that the lien was faulty because the notice of the lien was not recorded, even though the notice had been registered; and in another case it was held that although the notice was recorded, it had not been registered and therefore the land was free of the lien. A money judgment, however, was obtained.

Under the California act we have what is known as Section 98, and that is what we know as the "cure-all" section. As to everything not covered by other sections we fall back on Section 98. For instance, an owner may convey his property. The transaction did not go through escrow; there is no policy of title insurance; the buyer is not familiar with the provisions of the land registration law; he records his deed; he gets no certificate of registration; five years later he proceeds to sell in the same manner and his buyer records. When the second buyer sells he deals with someone who knows there is registered land and requires a Registrar's Certificate. In the meantime both prior grantees have died. They cannot get transferees' affidavits. The certificate of registration is lost. The registrar cannot take the deed without an affidavit and the Certificate of Title. The seller runs to his attorney and asks: "What will I do?" The attorney says Section 98 will cure it because you can file a petition and secure an order of court directing the registrar to

take a deed without transferee's affidavit; or if the original deed is lost, it is always within the jurisdiction of the court to direct the registrar to take a certified copy of the original deed. You can always complete the chain of title through the provisions of Section 98.

In our office we have indexes similar to the lot books which the title companies have, and every parcel of registered land is carried under the description. If we have the description of the property we can determine the owner and the number of the last certificate. That is much easier than to run a name index. We also maintain a name index, so if you know a man owns a piece of property, but do not know the description, we can find it the other way. If registered, we can find it.

A piece of property once registered is always registered. In many cases the original registration covers a large piece of land under metes and bounds description. Opportunity has come to subdivide. Subdivision maps are prepared and recorded under the subdivision law, but before the owner can then deal with the property it is necessary to file a petition with the court, allege the registration, allege the fact of resubdivision, and have the court find that the resubdivided land as shown by the map is the same land, or part of the land, described in a certain certificate or certificates in our office, and direct the registrar to cancel such certificates and issue new ones under the new description.

The Land Registration Act provides that the registrar shall not make rules or regulations that work a hardship on any owner of registered land, and we read into that section that we may be permitted to make rules and regulations which will work to the benefit of such owner, and that is why we sometimes clash with attorneys and owners when we request or demand certain things. But after all, they are really for their benefit, and while they may be inconvenient to comply with at the time, every one has to comply with the same request or demand; so we suggest that, when possible, compliance be had and thus avoid all arguments.

We have, during this present war, worked out different forms of transferee's affidavit to cover situations which cannot be avoided. We have always heretofore required that when husband

and wife acquire property, either as community property, as tenants in common, or as joint tenants, that the transferee's affidavit be signed and sworn to by both husband and wife. We have found that a great many wives of service men are acquiring property, sometimes in joint tenancy, sometimes as community property, while their husbands are overseas, and it might take months, or they might never get his signature, so we have drawn special forms of transferee's affidavit which permit the wife to sign alone. We also have a form of affidavit by a wife where she is acquiring property as separate property, if she alleges property acquired with her own separate funds. We will accept an affidavit signed by her alone, but that statement must be in the affidavit. A conveyance in joint tenancy to married persons other than husband and wife must be joined in by their spouses and the affidavit must state the property is being acquired in joint tenancy with the other party and that the interest of the affiant taking title is held as his or her separate property.

Land once registered is always registered. Registration cannot be terminated. There is no provision for withdrawal after the petition is heard and registration ordered. There are a few states—Washington is one—which do have a provision for withdrawal under their registration law. Illinois, Massachusetts, and California are all very similar in their registration laws, and there is no provision under either of those three for withdrawal.

Before the court will hear and determine a petition for registration, the petitioner must submit evidence of title prepared either by a reputable title company, or he must present an abstract of title.

Certificates are issued only as to entire fee—not for life interests.

There are three major items which might be termed defects in registering titles. First, the certificate of title does not cover and cannot be made to cover matters arising in the federal court. In other words, a bankruptcy may be pending in the federal court and the certificate will not show it. We do not become aware of bankruptcies until the order of sale issues. The second is concerning federal tax lien judgments. The third major item is the matter of an insane owner. We would not be aware of the fact that the owner was insane until such time as his guardian got a court order to sell or encumber.

INDEX TO VOLUME 20

GENERAL INDEX

[References are to pages in Volume 20]

A	Page		Page
Administrative Agencies, Proposed Reform—ABA Bill.....	118	Criminal Departments of Los Angeles County Superior Courts	327
—Judicial Council's Proposed Act	122	Constitution and By-Laws, Proposed Amendments.....	235
Artists of the Law.....	202		
B		D	
Bankruptcy Law—Its History and Effect Upon Our Commercial Life	172	Daniel Webster Writes an Opinion	358
Bar's Cooperation With War Council	73	Developing Judicial Organization	127
Bar in Other States.....	325	Dumbarton Oaks—and After Editorials	241
Bill of Rights, Our—What Makes It Workable.....	279	E	
Bluejackets and Divorces.....	138	—Bringing It Home to Us....	161
Book Review		—Dawson Runs Again.....	33
—The Glittering Hill.....	96	—Footnote to the Peace Plan	289
Bretton Woods Agreements	310, 316	—Lawyers Returning From Military Service	353
By the Board..... 71, 99, 164, 196, 262, 291		—Lawyer's Vision, A.....	65
By-Laws and Constitution, Proposed Amendments.....	235	—Loose Talk	97
C		—Maintaining the Standard.....	193
California Loses More Business to Washington.....	168	—More Loose Talk.....	129
Clever English Trial Procedure	110	—New Members.....	225
Client Care-taker, The.....	85	—Power to Destroy.....	257
Comment and Criticism (see, also, Random Comment).....	6, 37, 72, 134, 167, 197, 227, 263, 293	—Power to Destroy—Replies	300
Committee Reports		—Sovereignty—Anarchy	1
—Coordination with the State Bar	170	—Speak Now	36
—Juvenile Crime and Its Prevention	215	—Under the Same Tree.....	321
—Law Library Building.....	295	I	
—Reporters' Fees in the Superior Court	213	Is a Presumption Evidence?	39
—Traffic Courts	222	J	
Committees, 1945, of the Association	345	Joint Tenancy (Second and Third Installments. See Vol. 19, p. 389 for First Installment)	20, 50
Community Property from a Tax Standpoint	182	L	
Community Property Tax Problems, An Outline of....	334	Land Titles, Registration of..	373
Criminal Appeals	252, 268	Law Library Building, Proposed	
		—Committee Report.....	295
		—Let Us Reason Together....	136
		—Letters from Joseph Smith and Kemper Campbell.....	229
		—We Start It, You Finish It	167
		—Yes, We Have No Million * Dollars	103
		Legal Ethics	
		—Advertising and Solicitation (Opinion No. 152).....	207

Page

os

ior

327

ws,

235

an

358

ni-

127

iter 241

s... 161

33

Plan 289

rom

353

65

97

rd... 193

129

225

257

plies 300

1

36

321

ence? 39

and

See

First

20, 50

n of... 373

Pro-

295

ther... 136

Smith

229

ish It 167

Million

103

itation

207

	Page
—Advertising and Solicitation (Opinion No. 153).....	211
—Advertising and Solicitation (Opinion No. 155).....	355
—Advertising and Solicitation (Opinion No. 157).....	358
—Breach of Trust.....	143
—Legal Employment (Opinion No. 154).....	326
—Practice of Law (Opinion No. 156).....	356
Life Estate with Power of Anticipation.....	87

M

Members, New and Reinstatement.....	10, 37, 103, 250
Members, Sustaining.....	11
Mexico, Practice of Professions in.....	354
Mexico, Restrictions on American Investments in.....	267
Minors' Claims, Compromise of.....	145

N

New Members (see Members)	
---------------------------	--

O

Officers and Trustees, New..	164
Our Bill of Rights—What Makes It Workable.....	279

P

Perfect Bureaucrat, A.....	12
Petition for Instructions to Construe a Will—Note on Estate of Thramm.....	196
Powers of Appointment, Use and Tax Consequences in Inter Vivos Trusts.....	82
Practice of Professions in Mexico.....	354
Procedural Reform in Administrative Agencies	
—The ABA Bill.....	118
—Judicial Council's Proposed Act.....	122

R

Random Comment.....	322
---------------------	-----

AUTHORS' INDEX TO ARTICLES

[References are to pages in Volume 20]

B

Beckwith, Edmund Raffin—	
A Perfect Bureaucrat.....	12

	Page
Registration of Land Titles....	373
Restrictions on American Investments in Mexico.....	267

S

Sacred, Solemn Task, A.....	307
Salary and Wage Stabilization.....	359

Sections

—Announcement of Round Table Lectures on Accounting in the Legal Profession..	68
—Names of.....	8
—Officers of.....	8
Simplified Trial Procedure 76,	199
Superior Court Filings in Relation to New Court House Requirements.....	231

T

Taxation of Community Income — Commissioner v. Harmon.....	106
Termination of War Contracts.....	149
Trustees, New Officers and....	164

U

Use and Tax Consequences of Powers of Appointment in Inter Vivos Trusts.....	82
--	----

V

Vessels, Wartime Restrictions upon Transfer of.....	294
---	-----

W

Wage and Salary Stabilization.....	359
War Chest, The.....	49
War Contracts, Termination of.....	149
Wartime Restriction upon Transfer of Vessels.....	294
Webster, Daniel, Writes an Opinion.....	358
What Kind of Peace.....	264
Will, Construction of, Petition for Instructions—Note on Estate of Thramm.....	196

Bertram, Perry—

Wage and Salary Stabilization.....	359
------------------------------------	-----

C		Page	Moore, Ewell D.—		Page
Carr, Charles H.—			Procedural Reform in Ad-		
California Loses More Law			ministrative Tribunals—		
Business to Washington..		168	The ABA Bill		118
Conley, Elmo H.—			Judicial Council's Adminis-		
Community Property from			trative Agencies Survey		
a Tax Standpoint.....		182	and Proposed Act.....		122
Cross, Albert M.—			Superior Court Filings		
Joint Tenancy		20, 50	Studied in Relation to		
			New Court House Re-		
			quirements		231
D			Mullin, J. W., Jr.—		
Dabagh, Thomas S.—			Petition for Instructions to		
Let Us Reason Together....		136	Construe a Will—Note		
Yes, We Have No Million			on Estate of Thramm.....		196
Dollars		103			
Dunn, Cecil L.—					
The United States and the					
Bretton Woods Agree-					
ments		310			
H			N		
Hale, William G.—			Nossaman, Walter L.—		
Is a Presumption Evidence? 39			Taxation of Community		
Harbes, C. H.—			Property Income—Com-		
Registration of Land Titles 373			missioner v. Harmon.....		106
Harris, Whitney R.—			An Outline of Community		
Bluejackets and Divorces.... 138			Property Tax Problems..		334
Home, Walter S.—					
Life Estate With Power of					
Anticipation		87			
Horton, Joseph K.—					
Wartime Restrictions Upon					
Transfer of Vessels.....		294			
L			S		
Laugharn, Hubert F.—			Sterling, J. E. Wallace—		
Bankruptcy Law—Its His-			Dumbarton Oaks — and		
tory and Effect Upon			After		241
Our Commercial Life.....		172	Stern, William B.—		
Breitenbach, H. Eugene—			Practice of Professions in		
Simplified Trial Procedure..		199	Mexico		354
Brown, Leon B.—			Restrictions on Investments		
The Use and Tax Conse-			in Mexico		267
quences of Powers of Ap-			Sturdy, Herbert F.—		
pointment in Inter Vivos			Termination of War Con-		
Trusts		82	tracts		149
M			T		
Mathes, William C.—			Tyrrell, Frank G.—		
Our Bill of Rights—What			The Client Care-taker.....		85
Makes It Workable.....		279	Developing Judicial Organi-		
McKay, William R.—			zation		127
Compromise of Minors'			Artists of the Law.....		202
Claims		145	What Kind of Peace?.....		264
The Criminal Departments			A Sacred, Solemn Task.....		307
of the Los Angeles					
County Superior Court....		327			
			W		
			Watts, V. Orval—		
			The Bretton Woods Agree-		
			ments for a World Fund		
			and Bank		316
			Westover, Myron—		
			Clever English Trial Pro-		
			cedure		110
			Simplified Trial Procedure..		76
			White, Thomas P.—		
			Criminal Appeals.....		252, 260

LETIN

Page

d- /

118

is-

ey

122

gs

to

e-

231

to

te

196

ty

n-

106

ty

s.

334

to

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241

in

354

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267

a-

149

85

i-

127

202

264

307

d

316

110

76

2, 268